



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

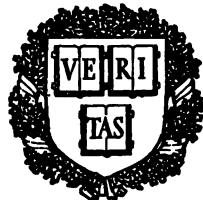
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

US  
5075  
30

McRoberts' Removals from Office. 1841

*US 5075.30*

HARVARD COLLEGE  
LIBRARY



TRANSFERRED FROM THE  
BUREAU FOR RESEARCH  
IN  
MUNICIPAL GOVERNMENT

# S P E E C H

O F

HON. SAMUEL McROBERTS,  
OF ILLINOIS,

ON THE SUBJECT OF

REMOVALS FROM OFFICE:

DELIVERED IN THE

SENATE OF THE UNITED STATES,

JUNE 24 AND 25, 1841.

---

WASHINGTON:

PRINTED AT THE GLOBE OFFICE.

1841.

655075.30

HARVARD COLLEGE LIBRARY  
RECEIVED THROUGH THE  
BUREAU FOR RESEARCH IN  
MUNICIPAL GOVERNMENT

1932

## S P E E C H.

*In Senate, June 24th and 25th, 1841.—Upon Mr. BUCHANAN's resolution calling upon the President to furnish the names of the persons removed from office since the 4th of March last:*

Mr. McROBERTS said: I concur, Mr. President, with the honorable Senator from Pennsylvania, [Mr. BUCHANAN,] that we should have the information sought for by this resolution at the present session of Congress. I object to any and all amendments calculated to produce delay. I believe the great body of the people—at least of those comprising my constituents—desire to have published the whole list of removals from office, as well as appointments made by this Administration, to enable them to compare the acts of the men and the party now in power with their former professions; to contrast their promises, before the late election for President, with their conduct afterwards. For this purpose, sir, I hope the information will not be withheld.

Mr. President, I propose to point this Senate and the American people to the reckless system of political proscription which is now raging throughout this land. I propose to bring before them the solemn pledges made by the men now in power, that such removals from office as have recently occurred, were not only no part of their creed, being totally repudiated by them, but that they were in fact a violation of the Constitution.

Sir, it is more than probable that the noise of the partisan, yes, the worse than Vandal scramble for the spoils of office, now going on, may render that party deaf to the voice of warning. Be it so. But let me tell them that the great body of the just men of this land will hear it. They have not forgotten the pledges that were made in every form that the pen or the tongue could make them; nor will they forget them. The concentrated influence of the selfish passions—the motives that stimulated the making of pledges never intended to be redeemed, may stifle the voice of truth and reason for a time; but, sir, it will be temporary. Even the best of mariners may, in the violence of a storm, be driven from their reckoning on distant seas, yet the sober sense, and the spirit of justice of our countrymen, like a clear sky to the lost and wandering mariner, has never failed to assist in bringing up the reckoning, and putting all right again.

Sir, this special session, this extraordinary session of Congress in the midst of summer, was called, and elections in different States precipitated, and some of them left disfranchised in the House of Representatives, (the State which I have the honor in part to represent being one of them,) to accomplish deeds, and to carry out measures, which could only be effected by taking the people by surprise. The leaders of the party dreaded delay; the haste of desperation seemed to have seized upon them. To a philosophical observer, it would appear that *to afford time for reflection to the people*, was most dreaded by the leaders of that party.

Sir, in order to afford some additional pretence for removals from office, a new system of Executive legislation has been adopted. Congress has not power to abridge the freedom of speech or of the press. The Constitution expressly prohibits an infringement of the rights of either. But, strange to tell, the Executive Government has arrogated to itself the right to *legislate* upon this subject. It has created a list of *political offences*, unknown to the Constitution and laws. And the same power which has created these vaguely defined offences, is at once the accuser, the judge, and the executioner. It does not appear upon the face of the edict, how long it is to be in force, but it is presumed until all the Democrats shall have been removed from office, and all the old Federalists substituted in their places.

This edict comes forth as an *official act*; it is gravely headed “Department of State, March 20, 1841,” and referring to the President, says:

“He therefore directs that information be given to all officers and agents in your Department of the public service that partisan interference in popular elections, whether of State officers, or officers of this Government, and for whomsoever or against whomsoever it may be exercised, or the payment of any contribution or assessment on salaries or official compensation for party or election purposes, will be regarded by him as cause of removal.

“It is not intended that any officer shall be restrained in the free and proper expression and maintenance of his opinions respecting public men or public measures, or in the exercise, to the fullest degree, of the constitutional right of suffrage. But persons employed under the Government, and paid for their services out of the public Treasury, are not expected to take an active or officious part in attempts to influence the minds or votes of others; such conduct being deemed inconsistent with the spirit of the Constitution, and the duties of public agents acting under it; and the President is resolved, so far as depends upon him, that while the exercise of the elective franchise by the people shall be free from undue influences of ~~official~~ ~~men~~.

and authority, opinions shall also be free among the officers and agents of the Government."

And, to crown all, it is declared in the order that it shall have a retroactive operation. That its penalties shall be inflicted for any violations that "may have been permitted to exist."

Now, sir, this edict upon its face, and, at first reading, does not disclose its objectionable features, nor any one of its real objects. It is the practice under it that has unfolded its true character. Can any man tell, by reading this order, what is tolerated, or what is forbidden? We are told that "opinions shall be free among the officers and agents of the Government." And again, that "It is not intended that any officer shall be restrained in the free and *proper* expression and maintenance of his opinion respecting public men or public measures;" yet in another passage it is declared that they "are not expected to take an active or officious part in attempts to influence the minds or votes of others." And the penalty of removal from office is denounced against those who do not square their lives by this edict. Now, sir, what was meant by the free and *proper* expression and *maintenance* of opinions? If a man be allowed to *maintain* his opinions about public men or public measures, he must be allowed to defend his opinions in argument. To "maintain," an opinion implies the right of discussion. And yet this Administration has swept from office every opponent that they can lay their hands upon, who has been known to discuss public measures. Again, sir: what is meant by the "*free* and *proper* expression of opinion," as contained in the Secretary's edict? Why, sir, judging from the practice of this Administration, under this order, there is no such thing as either "a free" or "a proper" expression of opinion about public men or public measures, unless those opinions are freely expressed in favor of the Whig party.

Sir, this order, this Executive ukase, I will call it, was intended for no purpose but to deceive. It leaves every thing to Executive discretion. Like all attempts to create political offences, they are left undefined, as in most cases such things are undefinable. It was for that reason that the Constitution declared that Congress should make no law abridging the freedom of speech, or of the press. The "payment of money" for party purposes is mentioned in the order, and is considered an offence. Well, sir, suppose we so regard it. How stands the case then? Why, so far from this Executive edict being carried out in good faith, and made applicable to all, the fact is notorious that the payment of money for the most corrupt of party purposes, has been rewarded by appointments to office by this Administration. Let the case of Beta Badger, and his list of pipe layers and yarn dealers, verify this allegation. The charge has been proved in his case by the evidence of sworn witnesses. The edict is, therefore, a one-sided concern. If a Democrat contribute money for printing, or any other political purpose, it is felony, under this Executive order. If a Whig contribute money for a like purpose, or even for the most reprehensible purpose in party struggles, it is a matter of commendation, and is a passport to favor.

Sir, the issuing and publishing of this Executive edict, prescribing pretended rules for the government of citizens who hold office, presupposes that the order is to be executed only on those who violate it. No one will doubt this. Well, sir, it is a part of the jurisprudence of all civilized States, that no man shall be condemned until he is heard in his defence. This is a principle of universal jurisprudence, and held sacred by all nations; and in the most tyrannical periods of British history, the form of it at least, has been accorded to the vilest criminals.

Now, how has this order been executed? Have parties been notified of charges against them? No. Have they been permitted to confront the accuser, or to produce evidence in their defence? No. And yet the character, both public and private, of men, has been assailed, and is daily assailed, to procure their removal from office under this Executive decree, before an inquisitorial star chamber, of whom the chief accuser and judge is one of the Cabinet. I might refer to Burchard, Gardner, Dodge, Lucas, Hackelton, Foreman, Milburn, and dozens of others who have been proscribed without fault; without a hearing, and in violation of the very order which the Cabinet rest upon.

In looking over the history of our Government, it is but natural to inquire whether there is any precedent for this extraordinary proceeding?

Sir, the alien and sedition laws of 1798, under the elder Adams, like this Executive order, created political offences. That act provided—

"That if any person shall write, print, utter, or publish, any false, scandalous, and malicious writing or writings, against the Government of the United States, or the President of the United States, with intent to defame the said Government, or either House of the Congress of the United States, or the President, or either House of the said Congress, or the President, or to bring them or either of them into contempt or disrepute, or to excite against them, or either, or any of them, the hatred of the good people of the United States." Such persons being thereof convicted shall be punished by fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

Sir, this act was designed to prevent free discussion. It was a mere cloak for the most nefarious purposes. It was to be interpreted by the party in power. It was intended to gag men from freely canvassing, by speech, or writing, the obnoxious measures of the Federal party. The freedom of speech, and of the press, are terrors only to vice. An upright Administration would never fear being brought into contempt. It would need no legislative props. In the graphic language of the great founder of our political church, (Mr. Jefferson,) "error of opinion may be safely tolerated where reason is left free to combat it."

But, sir, this misnamed sedition act of the elder Adams, was not only objectionable as a mere cloak for oppression. The question was, did the Constitution of the United States confer on Congress power to make such a law? That was the question on which Jefferson and Madison so triumphantly fought the political battle of the country for years, till victory crowned their efforts. Our countrymen rose in the majesty and plenitude of their power, and put it down, and hurled from their places the public functionaries by whom it was passed. The judgment of earth rests upon it. So convinced are the people of its unconstitutionality and injustice, that the very last Congress passed an act refunding to the heirs of a venerable

patriot, Colonel Matthew Lyon, the fine of one thousand dollars, wrongfully wrested from him under that act.

The next act analogous to this tyrannical proceeding is the alien law of 1798, passed by a Federal Congress. That act provided,

"That it shall be lawful for the President of the United States, at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the Government thereof, to depart out of the territory of the United States within such time as shall be expressed in such order."

The act further provides, that if such alien shall be found at large in the United States, after ordered to depart, he shall be imprisoned for a term not exceeding three years.

Sir, that act was, for the time being, a surrender of the liberties of the country. It was the embodied essence of an unlicensed despotism. The powers conferred were not only extraordinary, but were to be exercised upon the mere whim and caprice, and by the arbitrary will of the President alone. He was made accuser, judge, and executioner. There was no offence specified; the mere arbitrary will of the President, like this Executive order, was substituted for law, and was sufficient to cause a man to be banished, without crime and without trial.

The Democracy, under Mr. Jefferson and Mr. Madison, expelled it from the statute book. Such an act was worthy of the reign of terror. An arbitrary President could apply its penalties to any thing that suited his party. To show how such power could be abused, I will state a case. The Constitution of the State I have the honor in part to represent, allows aliens to vote; provided they have resided in the State a given period; have attained lawful age; are free; white, and have complied with other requirements as to the payment of taxes. Now, if the alien act were in force, an arbitrary President, pending a violently contested election, might hold the elective franchise, allowed by the Constitution of that State to aliens, to be cause for their expulsion. He might dread their votes. Arbitrary discretion could as well apply to such a case as any other. In such an event the noble sons of the Green Isle, and the emigrants of the old and renowned German race, who have made homes for themselves and their children in that great and fertile State, but who have not been there five years, so as to be naturalized, might be expelled by an Executive act. They might be driven off with as much right as men are now removed from office, under that order, by this Administration. The known Democratic opinions of our German and Irish population, might consign them to prison ships, or to Botany Bay, with the same justice that the public officers are required to square their conduct by this order from the State Department.

I now return to a further analysis of the Executive order, which I have been considering. Sir, if these Executive edicts are not at once resisted, if they are allowed to be issued by the Departments, prescribing rules of conduct to the people, instead of the laws of the land, and the laws of courtesy, we shall soon have no more use for the Constitution. These Executive orders will come stealing one by one into the world, until all the relations of

life, public and private, must bow before them. If the people do not resist at the threshold this attempt at usurpation, the next decree may hint very gently that all officers of the Government must attend a particular church; and next, that as all the officers have to belong to one political church, it is thought best that they should all belong to one and the same religious church.

The tenure of office might be made to exclude religious, as well as political, "non-conformity." Sir, this edict I regard as a mere entering wedge, and put forth as a feeler to see what the public will bear.

Let us compare the mode of executing this edict with the mode of carrying out the sedition law, odious, oppressive, and unconstitutional, as that law is admitted to be. The sedition act of 1798 required an indictment; the accused had a right to a copy of the charge; he had a right to introduce witnesses in his defence; the trial was public, and the law applied only to violations subsequent to its passage.

How is it under this edict from the State Department? Why, sir, the accused is denied all knowledge of the complaint; he is not allowed a copy of the charge; he is not permitted to cross-examine the witnesses; the secrecy of the proceeding protects them from responsibility; and the edict declares upon its face, that persons shall be proscribed under it for what they may have done before it was issued.

These are the striking differences in executing the gag law of 1798, and the gag order of 1841.

Sir, we have all read of the odious laws of Draco and Dionysius, and odious as they were, they were not retroactive. The Federal party of '98 oppressed the country in every conceivable way; but it is reserved to the Whig leaders of 1841 to add retroactive penal edicts to the catalogue.

This order is a law to the Departments, because it is officially addressed to all in their employ. It points out, or rather attempts to point out and define, the political rights and offences of citizens who are in office. If this order were not intended to be a mere cloak for political oppression, would not all those who hold public employ be allowed a trial before they are condemned to its penalties? Or are the Department's afraid to let the accused confront the accusers before them? Sir, these things show very clearly that the American people may point to the members of the Cabinet, and say to them, as the great Apostle of the Gentiles did to a certain high priest, whom he characterized as a "whited wall;" "sittest thou to judge me after the law, and commandest me to be smitten contrary to the law?"

Sir, I tell them to come out from their hiding places. Why all these subterfuges about removals from office? Why not come out boldly, and stand upon the acknowledged ground of the Constitution? Do you expect to deceive the just men of this land, whether they be Whigs or Democrats, by this thin-sy veil of pretences? Are you ashamed to take back your solemn asseverations, made before God and man, that the Constitution conferred no power upon the President to remove from office. And are all your Executive edicts, and subterfuges,

designed to save your consciences from an open confession?

But, sir, where did this Administration get power to issue that order? Did they find it in the Constitution? No, sir, they found no warrant for it there. The Constitution declares that *Congress shall make no law "abridging the freedom of speech or of the press."* Such is the inhibition to Congress. Would Congress be denied a power which can yet be exercised by your Executive Departments? Or, in other words, can yet your President and his Secretaries declare that to be law, which is forbidden to exist by the Constitution even with the sanction of Congress? Sir, does the Secretary of State, the very man who issued this order, does he believe it constitutional, or that the President alone can remove officers under it? What might be considered strange, this same Secretary of State, only a few years ago, denied that the President had any such power. Nay more, he declared in this Senate, that the Constitution of the United States conferred no power upon the President alone to remove from office.

In order that there shall be no room for cavil, and that full justice shall be done, here are his own words:

"The power of removal is part of, or a necessary result from, the power of appointment, and therefore it ought to have been exercised by the Senate concurrently with the President."

Again:

"Those who maintain the power of removal as existing in the President alone, and driven to what seems to me very near absurdity."

Again:

"But it is the President and Senate, and not the President alone, who hold the power of appointment, and therefore according to the true construction of the Constitution, it should be the President and Senate, and not the President alone, who hold the power of removal."

If the President is prohibited by the Constitution from exercising the power of removal, will it be pretended that he and his Secretary can make an arbitrary edict, by which he can effect such removals? Can he accomplish that by indirection, which his party say is expressly prohibited by the Constitution?

Sir, there is another branch of this subject to be considered. It is one of great importance, and in its consequences reaches far beyond the present day, or the actors in the scenes passing before us. The foundations of elective Government, which rest upon truth, virtue, and honor, are essentially involved. It is the violated faith of this Administration, in its reckless course of removals and proscription, on the ground of political opinion, without any fault or dereliction of duty on the part of the persons proscribed, and after that party had pledged themselves before the world that no man should be proscribed for political opinion; and further, that removals from office by the President was a violation of the Constitution.

The leaders of the party now in power traversed this great country during the summer and fall before the election for President, and addressed primary assemblies of the people in public speeches, and in writing, declaring such to be among the leading objects for which they desired the election of Harrison and Tyler. Among the list of men who proclaimed this to be the creed of the Whig party, and who denounced removals from office as a violation of the Constitution, and as subversive of the objects of free Government, and as the es-

sence of despotism, was no other than the late President Harrison himself; the present President, John Tyler; Daniel Webster, Secretary of State; Thomas Ewing, Secretary of the Treasury; John Bell, Secretary of War; and many of the leaders of that party in Congress, among whom are the Senator from Kentucky, [Mr. CLAY,] and the Senator from South Carolina, [Mr. PRESTON.]

The people were asked to elect these candidates in order that proscription should be proscribed, and to affirm their creed against removals from office.

I commence with the Secretary of State. In the year 1835 a debate took place in this Senate upon the subject of removals from office. The bill before the Senate was, among other things, intended to repeal the act of Congress of 1820, limiting certain appointments connected with the customs and the public lands to four years, and which law affirmed the power of removal in the President. Mr. Webster wanted that law repealed. After speaking of the power of removal which was authorized by acts of Congress and the practice of the Government, he says:

"After considering the question of removal from office by the President again and again, within the last six years, in my deliberate judgment the original decision was wrong. I cannot but think that those who denied the power in 1820 had the best of the argument."

"It appears to me after thorough and repeated, and conscientious examination, that an *erroneous interpretation* was given to the Constitution in this respect, by the decision of the first Congress."

"The power of appointment being conferred on the President and Senate, I think the power of removal went along with it, and should have been regarded as part of it, and exercised by the same hands. I think, consequently, that the decision of 1820, which implied power of removal, separate from the appointing power, was erroneous."

"If the power of removal belongs to the power of appointment, or necessarily follows it, then it has gone with it into the hands of the President and Senate, and the President alone does not hold it."

"It is the President and Senate, and not the President alone, who hold the power of appointment, and therefore according to the true construction of the Constitution, it should be the President and Senate, and not the President alone, who hold the power of removal."

"Those who maintain the power of removal, as existing in the President alone, are driven to what seems to me very near absurdity."

Sir, these were the strong and pointed declarations of the Secretary of State in 1835. Such were the sentiments with which he regaled his party and the nation at that time. But that was not the last time he avowed such sentiments. Sir, he visited Richmond, Virginia, in October last, and in a public speech before the citizens of that renowned Commonwealth, he presented these doctrines as the Whig creed, in order to recommend himself, and his party, to public favor in the approaching election for President.

He said—

"There is the power of removal—a power which, in some sense, has been exercised most remorselessly. By whatever party it has been wielded, unless it be called for by the actual exigencies of the public service, Virginia, more than any State of the Union, has ever rejected, disowned, disavowed, the practice of removal for opinion sake. [Loud cheers.] I do honor Virginia in this respect."

Again, in speaking of Mr. Madison, he said—

"I am constrained, however presumptuous it may be considered, to differ in relation to one of his interpretations of that instrument. I refer to the opinion expressed by him, that the power of removal from office does exist in the Constitution, as an independent power in the hands of the President."

He further added—

"I am not now for the first time preaching against the dan-

per of an increase of Executive power, for when the subject was in discussion before Congress in 1835, I expressed there the same opinions which I have now uttered."

Then from February, 1835, until October, 1840, according to Mr. Webster, and he is the great oracle of his party upon constitutional law, there was no power in the Constitution to authorize the President alone to remove from office. Has the Constitution of the United States been altered, or changed since that time? How is it that this denounced, repudiated, and rejected power—the power of removal from office—should have sprung into newness of life, as by a resurrection from the dead, on the 4th of March, 1841?

Sir, with all these arguments and solemn declarations of the now Secretary of State, against the constitutional power of the President to remove from office, he now heads an Administration that has been, since the fourth of March, proscribing men, and removing from office, on the ground of political opinion, in a manner, and with an audacity and recklessness never witnessed in any civilized country.

What must the noble Virginians who responded, in shouts of applause, to his denial of this power of removal in the President, in his speech at Richmond in October last, what must they now think of the man and his pledges?

The audience was a magnificent one of both sexes, and all joined in the applause at the denunciations of the doctrine of removal. The ladies seem to have especially honored the learned speaker upon that occasion. Well, sir, what must be the feelings of all parties, and especially the ladies, who having no guile in their own bosoms, did not suspect others, and relied upon professions; what must have been their feelings when, in a few short months after this anti-removal speech, and when the sounds of his public pledges had scarcely ceased to reverberate from the walls of the State House at Richmond, the fierce work of proscription commenced, and the postmaster at their own lovely city was numbered among the superseded. Will the ladies ever applaud another Whig orator, or believe any more Whig promises? They will doubtless be a little shy for the future, and especially as it is said they never forget or forgive a breach of promise in any way whatever.

The next member of the Cabinet, whose remarks I propose to bring before the Senate, is the Hon. Thomas Ewing, the Secretary of the Treasury.

On the 31st of January, 1832, it appears by the journal of the Senate, page 108, that he offered the following resolutions:

*Resolved*, That the practice of removing officers by the President for any other purpose than that of securing a faithful execution of the laws, hostile to the spirit of the Constitution, was never contemplated by its framers, is an extension of executive influence, prejudicial to the public service, and dangerous to the liberties of the people.

*Resolved*, That it is inexpedient for the Senate to advise and consent to the appointment of any person to fill a supposed vacancy in any office, occasioned by the removal of a prior incumbent, unless such prior incumbent shall appear to have been removed for sufficient cause."

The honorable Secretary, you perceive, occupies no half-way house about removals for political opinion, or for any thing but to insure "a faithful execution of the laws." He affirms that such removals are hostile to the spirit of the Constitution.

In 1835, in a discussion in this Senate, Mr. Ewing, then a member, said:

"He (Mr. Ewing) considered this bill of great political importance, especially that section which limits the power of the Executive in removals from office, and requiring him to give account of his acts, and the reasons for those acts to this body.

"If the President have by the Constitution the power of removal from office, without the concurrence of the Senate, then is the second section of this bill a violation of the Constitution. If he have not that right by the Constitution, we have the power to pass this bill; and the public good requires that we should exercise it. I will confine myself to the discussion of the constitutional power.

"The first proposition which I shall attempt to establish is, that the Constitution does not vest in the President alone the power of permanently removing any officer, who is appointed by the President by and with the advice and consent of the Senate.

"The executive power shall be vested in a President of the United States." Take this expression in its general terms, as here used—the most general possible—unrestrained by any prior or subsequent clause; does it necessarily involve in itself the power of appointment to, or removal from office?

"For myself, I think that so far from this being a demonstrable fact, the evidence, external and internal, that the very reverse was true, is as strong as it is possible to adduce a negative proposition.

"The appointing power, then, being expressly vested, elsewhere than in the President, would it not follow that the removing power, which seems in its nature to attach itself to, and form a branch of it, the appointing power, should pass with it to the same department of the Government?

"Would it be consistent with a Government of laws, or indeed with any other but that of a despotic power, to place the individual officers of the Government so completely in the hands of the Executive that they would be, or cease to be, at his mere volition, without that will being reduced to a definite or tangible expression?"

"It appears to me clear, Mr. President, that the Constitution does not confer on the President alone the power of removal."

Sir, he was so earnest in his opposition to the constitutional power of removal by the President, that in the course of the discussion to which I have alluded, he boasted that the first measure he introduced into Congress was his famous resolutions denying the right of removal.

If it were a violation of the Constitution in 1832 and 1835 to remove men from office, and especially on political grounds, how does it happen, let me again ask, that it became constitutional to do so on and since the 4th of March, 1841? How has the Secretary of the Treasury, since he has been at the head of that Department, found constitutional power to carry on a system of proscription and removals, extending from prominent officers in the Treasury Department down to an humble light-house keeper?

The next member of the Cabinet, who has committed himself, upon constitutional grounds, against removals, is the Hon. John Bell, Secretary at War.

In April, 1840, he is reported to have used the following language, in a debate in the House of Representatives:

"As to the constitutional power of the President to remove a subordinate officer for a difference of political opinion, I will say no more than simply to ask gentlemen to recur again to that clause of the Constitution which provides that all civil officers may be removed from office upon conviction for 'treason, felony, and other high crimes and misdemeanors,' and after they have done so, to put the question to themselves whether any thing can be more supremely absurd, and even ridiculous than this provision of the Constitution, if the President was, by the same instrument, vested with the power, by his sole authority, not only to remove for 'treason, felony, and other high crimes and misdemeanors,' but for no reason at all, without any default whatsoever in the officer! The object of this clause in the Constitution was undoubtedly, in the first place, to provide for the removal of public officers who had disqualified themselves for the public service by their crimes, or the abuse or gross neglect of their trusts, and, secondly, to throw around the civil officer the same protection and security, in the enjoyment of their rights, privileges and emoluments, but, above all, their

good name, against all tyrannical and arbitrary invasions or restrictions that the Constitution and laws, both of the State and Federal Governments, are so careful to maintain and protect in the private citizen. The genius and spirit of our whole scheme and system of civil liberty are directly opposed to the discretionary and arbitrary control which the President claims and exercises over the public officers."

Here, again, sir, the constitutional power of removal, is denied in the broadest terms. The learned Secretary of War has branded the power of removal, to use his own words, either for "a difference of political opinion," or "for no reason at all," or where there is "no default in the officer," as "*supremely absurd.*"

Nay more, he denounced such removals as tyrannical and arbitrary invasions of the rights of the citizen. In addition to the constitutional objection, he declared that the genius and spirit of our whole system of civil liberty, were directly opposed to this arbitrary power. But times are now changed. Federalism is in the ascendent. Wide spread proscription in direct violation of the rules formerly proclaimed, is now sweeping the country from Maine to Louisiana.

Sir, I should like to know how many "supreme absurdities," according to his own doctrines, he and his associates of the Cabinet have committed since the 4th of March, 1841? I should like to know how many "tyrannical and arbitrary invasions" he and his associates are perpetrating every day of their consistent lives upon the "rights of the citizen?"

So much, Mr. President, for the members of the Cabinet. Let us now look to what their leading friends have said upon the same subject. The first to whose remarks I will call the attention of the Senate, is the Senator from Kentucky, [Mr. CLAY.]

On the 10th of March, 1834, he offered the following, among other resolutions:

"*Resolved,* That the Constitution of the United States does not vest in the President power to remove at his pleasure officers under the Government of the United States, whose offices have been established by law."

In the address of the Senator with which he accompanied the resolutions, he [Mr. CLAY] said:

"The first resolution asserted that the President, by the Constitution, is not invested with the power of removal from office at his pleasure.

"These resolutions comprehended grave questions of the highest importance, and which he (Mr. CLAY) verily believed involved the just equilibrium between the Federal branches of the Government, and the purity, if not the actual existence, of the Government. The three first proceeded upon the assumption, that the President is not clothed by the Constitution with the power of removal from office.

"He had examined the Constitution with the utmost care and attention of which he was capable, and he felt firmly convinced that it did not grant any such power to the President."

In February, 1835, in a debate upon the power of removal, the Senator [Mr. CLAY] said:

"He hoped the Senator would come out on this question, and let it be seen if there was any one on this floor who would rise and assert that the President had the power, without any ground of constitutional implication, to remove from office; that the stream could exist without the spring. If the President had such power, then the Constitution is not worth a sou."

Such, sir, appears to be the recorded declarations of the Senator from Kentucky against the power of removal.

[Here Mr. CLAY rose and said, if the Senator from Illinois would permit, he wished to say a word upon the subject before the Senate.]

Mr. McROBERTS. The Senator from Kentucky is welcome to the floor for that purpose.

*[Mr. CLAY. I wish to say that I have not*

changed my opinion since I offered the resolutions, or made the remarks, which have been read by the Senator from Illinois.]

Mr. McROBERTS. I am aware that the Senator had professed not to have changed his opinion as late as last summer. In a speech which he made in Virginia, urging the support of the Whig candidates, he, as usual, denounced the power of removal. Members of the Cabinet did the same thing, about the same period, and no one has heard that they have changed their opinions about removals. I am not objecting to the opinions of the Cabinet, or the Senator. My objections are to the daily violations of these opinions by removals. I object to the reckless proscriptions which have taken place, and are still going on, when the Cabinet, and the Senator, and the whole party, had declared against such a course of policy.

It will be perceived, and let it be remembered, that all the persons whose opinions have been adverted to, *opposed removals on constitutional grounds.* They denied the power in *toto*, as existing under the Constitution. A few others seem to have placed their objections to it upon the ground that it was unjust, anti-republican, and inexpedient.

In a debate in this Senate, sometime last spring, and since the result of the election for President and Vice President, was known, the Senator from South Carolina [Mr. PAESTON] used this language:

"I shall resist and denounce all giving of office as a political reward, or turning out of office for mere political opinion." Did not the distinguished person who is to be advanced to the head of the Government, expressly take ground against such a sentiment, in a bill he introduced into Congress? Do not his sentiments stand recorded against it? We practise on a principle like that? No, sir, no; this system of proscription is itself to be proscribed. I stand on that ground; and, so help me God, I will, so far as I am concerned, act upon it. I believe those who are to be at the head of the Government have put themselves upon the same ground. They come into power not to divide the spoils of the country among the members of a faction.

The Administration coming into power reject and repudiate the infamous maxim that to the victors belong the spoils. The spoils—what spoils! The spoils of our common country? The spoils of our brethren and fellow citizens? Is the country a vanquished country? God forbid! I should as soon think of making spoil out of the possessions of my own family. *I hold it to be a Whig doctrine, the doctrine on which General Harrison, as President of the United States, means to stand, that for mere political opinion no man is to be proscribed.*"

How have these predictions been fulfilled? The Senator seemed to believe that proscription was to be proscribed; that no man would be removed for political opinion; and no one appointed to office as a political reward. That the maxim "to the victors belonged the spoils" would be rejected and repudiated by the new Administration as absolutely infamous. Now, sir, to contrast the opinion expressed by the eloquent Senator, of what was to be the policy of the Administration upon the subject of removals, with the odious system of proscription practised upon it, one might well exclaim, "O! what a fall is there, my countrymen." It shows that the eyes of their most prominent friends have been in dim eclipse to the real motives of the actors in power.

The late President Harrison in a speech at Cleveland, is represented to have used this language:

"I see over the way a public officer; although he may oppose me, if he does so honestly and conscientiously, I shall be the last man to disturb him. Before I would remove him for a mere difference of opinion, I would suffer my right arm to be severed from my body."

In his inaugural address, he said, speaking of our Government:

"It can interfere with no one's faith, prescribe forms of worship for no one's observance, inflict no punishment but after well ascertained guilt, the result of investigation under rules prescribed by the Constitution itself. These precious privileges, and those scarcely less important, of giving expression to his thoughts and opinions either by writing or speaking, unrestrained but by the liability for injury to others, and that of a full participation in all the advantages which flow from the Government, the acknowledged property of all, the American citizen derives from no charter granted by his fellow man."

And yet, within a short time after these solemn declarations were made, great numbers of our fellow-citizens were removed and proscribed, without a trial, without guilt, "the result of investigation under rules prescribed by the Constitution itself; and in some cases where investigation, or even a hearing, was refused. Nay more, "this precious privilege," as the inaugural called it, of "giving expression to thoughts and opinions, by speaking or writing," is in many cases known to be the sole cause of removal.

In regard to the late President, it is due to the occasion to say, that I believe he had but little hand in the infamous proscription carried on in his name. He disclaimed it to so many men, and upon so many occasions, that I must suppose it was the work of others—of his cabinet; and who, after his death, assumed to be his political administrators.

Mr. Tyler, the present President of the United States, in a letter to some gentlemen of Charleston, South Carolina, shortly before the election, used this language as a reason for his preference for General Harrison:

"Because he regards the public offices of the country as created for the benefit and advantage of the people, and not for the political advantage of the President; and in that spirit, utterly denies the right on the part of the President, to remove from office one 'who is honest, capable, and faithful to the Constitution,' to make way for another whose chief recommendation is to be found in his being a noisy and clamorous demagogue and partisan."

In a paper put forth by Mr. Tyler, upon his attaining the Presidency, and dated the 9th of April, 1841, he said:

"I will remove no incumbent from office who has faithfully and honestly acquitted himself of the duties of his office, except in such cases where such officer has been guilty of an active partisanship, or by secret means—the less many, and therefore the more objectionable—has given his official influence to the purpose of party, thereby bringing the patronage of the Government in conflict with the freedom of elections."

And then to carry out the farce, and as if designed to insult the feelings of those who were to be proscribed, he adds, ironically as we must believe:

"Freedom of opinion will be tolerated, the full enjoyment of the right of suffrage will be maintained as the birthright of every American citizen, but I say emphatically to the official corps, 'thus far and no farther.'"

How has the freedom of opinion been tolerated by this Administration? How has the right of suffrage, this great birthright every American citizen, been maintained? Why, sir, proscription has been the daily reward of both. Mr. Barker, the late talented Comptroller of the Treasury, and dozens of others that could be named, are living evidences of the truth of this allegation. Men have been removed without the shadow of complaint, except their political opinions, which would not "be tolerated."

Sir, I am under nearly the same impressions with regard to Mr. Tyler, that I entertain in regard

to General Harrison. I think it impossible that he could be the author, or could sanction, or even know, of many of the odious movements of the Cabinet. These are my reasons. Mr. Tyler was once a decided Democrat; a champion of the State Rights doctrine; an opponent of the Bank of the United States on constitutional grounds; and in every thing a disciple of Jefferson. He has never made any public declaration of his apostacy from these principles, and we must therefore treat him, for the present, as of the same political faith. It would be expected that a Chief Magistrate, making important appointments, would select men who at least concurred with him upon great constitutional questions. But how is it with the great body of the recent appointments? Are they Democrats? Are they State Rights men? Are they of the school of Jefferson? No, sir; not one, so far as I know or have heard. The men who concurred in opinion with Mr. Tyler upon constitutional questions, have been removed, and followers of the old Federal party, or latitudinarian constructionists of the Constitution, have, with but few exceptions, been appointed in their places. There is another reason. The removals have progressed so rapidly that no one man could have examined the applications. In the Post Office Department alone, the work of removal would keep one man busy. These things induce me to suppose that the system of proscription now raging, is the work of the Cabinet far more than the President.

I now ask the attention of the Senate to a brief notice of the Post Office Department. I ask this the more especially on account of the unparalleled proscription in that Department.

The head of it, while a member of the House of Representatives, voted in various instances with the party called Abolitionists. He voted against the resolutions introduced by the Hon. Mr. Atherton, and which were designed to prevent the further agitation of the subject of Abolition. In 1837, a resolution was introduced into the House of Representatives in these words:

*"Resolved*, That any member who shall hereafter present any petition from the slaves of this Union, ought to be considered as regardless of the feelings of the House, the rights of the Southern States, and unfriendly to the Union."

Mr. Granger voted against it.

I have information from the most undoubted sources, that postmasters at subordinate offices, and uniform opponents of Abolition have been removed, and Abolitionists appointed in their places. For many years, it has been the rule of that Department to publish a weekly list of the removed and appointed postmasters. This salutary regulation has, from motives best known to the Postmaster General, been discontinued. We are therefore deprived of the opportunity of inspecting the list. If that list were published as heretofore, we could see who are the favorites of the present head of the Post Office. Why was the publication of the list of removals and appointments discontinued? Why depart from a rule so convenient, as well as so just to the whole country?

Sir, these things are ominous, and especially when removals are charged to have been made at the rate of one hundred and thirty per week. This furnishes an additional reason why we should have the list furnished during the present session. It

the business of the South more than any other part of the county, to look to this subject.

Sir, the State which I have the honor in part to represent has but few negroes, either free, or owing service. Our steady opposition to Abolition, in all its forms, has not been prompted by any personal interests. It has been of a higher, and I believe I may say, a nobler sentiment. It has been prompted by the highest motives of patriotism, and an unwavering devotion to the union of the States.

In order to prevent the establishment of Abolition presses in that State, and which could have had no other effect than to annoy our fellow-citizens of Missouri on the one side, and those of Kentucky on the other, you will all recollect to have heard of the scenes of violence that ensued. Upon one occasion, unfortunately several lives were lost. In the legislation of the State; in the conduct of her public men; and of the great body of her citizens, Illinois has shown a firmness and a unanimity in resisting that dangerous delusion, Abolition, worthy of all commendation. Yea more, no Southern man has ever had just cause of complaint against that State, or her authorities, for not promptly awarding to him all his rights. Nor is she alone among the non-slaveholding States in maintaining these principles. Sir, let me tell Southern Senators that the Democracy of the non-slaveholding States have long since taken a stand upon this subject. All that courage and honor, and law, would sanction or permit, they would do to sustain their brethren of the South, and to uphold the compromises of the Constitution. They could not be driven by any state of circumstances to take ground against you.

But, sir, let me ask Whig Senators from the South to contemplate the treatment which the Democracy every where, but I believe more particularly in the non-slaveholding States, are receiving at the hands of the mongrel party now in power. Look at the system of proscription, descending down to petty post offices at cross roads. It is well known that Democratic postmasters would not distribute Abolition documents. It is also known that the mails have often been crowded with them. Are you sure that the unparalleled system of removals in that Department, now going on, may find your post offices filled with men, a few months hence, who will refuse to circulate Abolition documents? This is the business of the men of the South. But if that day ever comes, (which God forbid,) when Abolition is found to be the road to political preferment, let me tell you, men of the South, it will present itself under a new and far more formidable aspect.

A few words as to some of the persons proscribed. Who are the men removed under the Webster decree? Burchard, Gardner, Lucas, Dodge, Jones, Hackelton, Foreman, Milburn—but I will not attempt to designate by name the vast list of the proscribed.

A distinguished public officer who has been removed, addressed a communication to John Tyler, the President, and, in most respectful terms, requested that, if any complaint, personal, political, or official, should be made against him, all he asked was to be permitted to know it, before any action was had; and further informed the said John

Tyler that, unless he disproved every matter of complaint, he would cheerfully take his dismissal. How was this manly request met? How should an honorable man have met it, after Tyler's declaration that he "would remove no incumbent from office who has faithfully and honestly acquitted himself of the duties of his office," except for active partisanship in elections?

Sir, I will tell you how it was met. The gentleman was removed without a hearing, without complaint, and the office conferred upon "a noisy partisan," in violation of Mr. Tyler's own rule.

Sir, I must name particularly a few of the proscribed. Colonel Hackelton was removed early in March from the office of register, at Dixon, in Illinois. He was an able, faithful, and punctual public officer. The General Land Office bears testimony to this. As a man he was without reproach. His political opponents admit that he could not be justly charged with "active partisanship" in politics. According to the pledge of the President, therefore, he could not be removed. Yet, in the face of all this, he was, without notice and without trial, struck from the rolls as soon as Federalism got into power.

Col. Milburn, the Surveyor General of Illinois and Missouri, is another of the proscribed. That office is one of great importance to the people of those States, and in such an office not only talent but experience is of the highest importance. Col. Milburn has been connected with the office, first as a surveyor, then as a clerk, and as chief clerk for many years, and afterwards as Surveyor General. His knowledge of its multifarious duties is superior to that of any other man. At the General Land Office he is regarded as not surpassed by any Surveyor General in the United States; as a public officer and a citizen he is said not to have an enemy in the world. He has given the highest satisfaction in the discharge of all his official duties; and the Whig press of both those States admit that he was not a partisan in politics. A leading Whig journal, which I hold in my hand, says:

"It is conceded by all our friends that the late Surveyor General was honest, capable, and faithful in the discharge of his duty; and, while acting as a Government officer, scrupulously abstained from an obnoxious interference in elections." "His removal is, therefore, in direct violation of one of the leading principles for which as a party we contended, that no man should be proscribed for opinion's sake."

These manly sentiments show that you have at least one honest editor in your party, a gentleman who has the courage to denounce falsehood and corruption when committed by his political friends.

Col. Milburn has been removed solely for opinion's sake. The declarations of Harrison and Tyler, and the Websterian edit, have all been falsified in this remorseless removal. These proofs and evidences are before the living world, and the judgment of earth will forever rest upon that odious transaction.

The territories of Wisconsin and Iowa have been scourged as with a pestilence. Such a universal proscription has never fallen upon any people—no, not even in a conquered province. The Governors, Secretaries, Marshals, District Attorneys, Surveyors General, Registers and Receivers of Land Offices—all, all have been swept off. Time would not allow me to point out the individual cases

of outrage that have been perpetrated. But, sir, allow me to call your attention to the case of Governor Dodge. He is a prominent victim, and is known in every part of that great valley. He was an active and efficient officer in the war of 1812; and subsequently held various offices in Missouri, both civil and military.

When General Dodge removed to Wiskonsan, there were within its limits a great number of the aboriginal inhabitants, the red men of the forest. In 1832 a war broke out between them and the whites; and, sir, that war came from a race of men who do not precede hostilities by wordy negotiations; they make no formal declarations of their purpose; they act like John Bull, when, under the cover of night, he violated our territory, burnt the steamboat Caroline at Schlosser, and murdered one or more of our citizens. That war was with a race of men who give no other notice of their purpose than the war whoop, and the sound of the rifle. It was with a race of men who seldom give quarter, and who count their victories by the number of scalps they have taken. The gallant men of the Territory came to the rescue. General Dodge organized a small but intrepid corps, who took the field, and, as far as possible, staid the plague, until the volunteers from Illinois, and a few companies of the army, could be brought to their relief. During this period the enemy waylaid all the roads, and murdered many of the inhabitants. One incident connected with this war will serve to illustrate the character of General Dodge and his followers.

The enemy came to the Pecatolica, and murdered some of the citizens. Dodge and his party pursued them, and being on horseback, came in sight of them in a few hours in the open prairie. There were fourteen Indians, and, I believe, twenty-two whites. The enemy, finding they could not make their escape, posted themselves for battle in a small grove of timber.

Now here was just the situation to test the courage and devotion of any man to his country. The exasperated enemy were armed with the rifle, tomahawk, and spear, which they had been accustomed to use all their lives. They had a decided advantage in position, protected as they were by the trees of the forest, and were enabled to have their usual advantage—the first fire.

To dislodge the enemy a charge must be made in the open prairie, in the most exposed of all possible situations, and from the number and desperation of the enemy, at a great sacrifice of human life. In such a situation what is the course of Dodge and his brave associates? They never hesitate. They resolve to dislodge the enemy or perish in the attempt. They dismount from their horses, and, headed by their commander, charged the enemy on foot. They received the enemy's fire when almost at the muzzle of their guns. A desperate conflict ensued between the survivors and the enemy. After each party had delivered its fire it became a personal encounter between the exasperated combatants.

The story is soon told. The enemy all fell. Not a man of them was left to tell the tale.

I met him and the survivors of his party a few days afterwards, and some of them still carried

upon their persons the evidence of the conflict. The long and arduous services which he subsequently performed, his visits to and treaties with several Indian tribes, as far west as the Rocky Mountains; his appointment to the office from which he has been so unjustly dismissed, and his conduct while in it, it is unnecessary to dilate upon. They have become matters of history.

A leading Whig journal of Illinois, speaking of his removal from office, and protesting against it, says:

"As one of the brave defenders of Wiskonsan, in times that tried the courage of the best of men, on that frontier, he (General Dodge) stands deservedly among the foremost."

Again:

"His name, his fame, his public acts, are interwoven with the interest of the Territory."

Here is the testimony of a political opponent of General Dodge; one whose location and means of information enable him to appreciate public sentiment. Yet in the face of all this, and violation of their own pledges, and in contempt of the known sentiments of the whole country, this same Henry Dodge has been stricken from the rolls of the public service.

Let me ask the Senator from South Carolina, who so eloquently denounced proscription, if he approves of this removal? Is this "proscription proscribed"? Would that Hon. Senator, or any other man having an American heart in his bosom, have removed Dodge?

Let me tell the citizens of Wiskonsan and Iowa, why it is that such desolation, in the way of proscription, has swept over their land. It is because old Federalism wants to triumph over them. The second reign of terror has commenced. The object is to make war upon your Democratic principles; to break down your Democratic men; and to bring those two territories into the Union as States, in Federal leading strings. They well know that Wiskonsan and Iowa, are destined to hold the balance of power in the Senate of the United States, and it behoves them to manacle these young giants in time.

I have no fears for the result. I know something of the noble-hearted, unterrified Democracy in those Territories. They can accomplish whatever man can accomplish; and can do whatever patriotism and honor may require at their hands.

A few more words, and I have done. Sir, what have the American people beheld since the present Administration came into power—an Administration pledged against removals? Why, sir, a system of proscription, on account of political opinion, unparalleled in any age or any country. All the Surveyors General of the United States, or nearly so—all the Governors and Secretaries of Territories—almost all the collectors and subordinates in the custom houses—district attorneys and marshals—with postmasters beyond number, are, in three short months of the reign of the present dynasty, swept from office, and, as many of their own journals admit, without cause, and in violation of the pledges of that party. The proscription has been carried down to humble tide-waiters.

Were pledges ever made so solemnly as the leaders of that party made them against removals; and were ever pledges so soon violated after they

were made? Does the history of man's political depravity furnish any parallel to conduct like this?

The people voted with that party upon their own principles, and now when they have obtained power by that vote, they turn upon their heel, and showing their habitual contempt of the people, they violate not only their own pledges, but the solemn injunctions which the popular suffrage imposed upon them.

Sir, I have not physical strength to go through

with this argument, nor to investigate it, as it should be investigated. The people can now judge which party in maintaining their respective principles, has done most to degrade, and which has done most to elevate the dignity of man's nature.

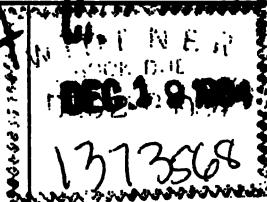
I will neither attempt to prophecy nor to conjecture. But thus much I will say, that if the soul of man has not lost the faculties that God impressed upon it, the people of this great land will make a day of political reckoning with this Federal dynasty.

This book should be returned to the Library on or before the last date stamped below.

A fine of five cents a day is incurred by retaining it beyond the specified time.

Please return promptly.

DUE DEC 18 '47



US 5075.30  
Speech of Hon. Samuel McRoberts, of  
Widener Library 005948968



3 2044 086 268 950